able to prior parties among themselves. N. Y. LAWS OF 1898, c. 336, § 96. *Held*, that the maker of a usurious note is liable to a holder in due course. *Klar* v. *Kostiuk*, 119 N. Y. Supp. 683 (Sup. Ct. App. Div.).

By the law merchant, illegality of consideration was only an equitable defense. *Hopmeyer* v. *Frederick*, 74 Ill. App. 301. But statutes have frequently declared negotiable instruments given for usurious loans or gambling debts void, even in the hands of a holder in due course. *Claflin* v. *Boorum*, 122 N. Y. 385. Such statutes restrict negotiability, and are contrary to that spirit of the law merchant which aims to protect the *bonâ fide* purchaser. A fair construction of the Negotiable Instruments Law would seem to allow a holder in due course always to hold the maker, regardless of the nature of the consideration given by the payee. *Wood* v. *Babbitt*, 149 Fed. 818. It has sometimes been held, however, that the Negotiable Instruments Law does not affect usury and gambling statutes. *Alexander* v. *Hazelrigg*, 29 Ky. L. Rep. 1212. The purpose of these statutes was the prevention of such offenses, and where not expressly repealed, it has been argued that on grounds of public policy they should continue in force. But such a narrow construction unnecessarily hampers the circulation of notes. See 20 HARV. L. REV. 492.

CARRIERS — SLEEPING CARS — LIABILITY OF CARRIER FOR ACTS OF EMPLOYEE OF SLEEPING CAR COMPANY. — The porter of a sleeping car which was attached to the defendant's train, but which belonged to a separate company, wrongfully refused to make up the plaintiff's berth. *Held*, that the defendant is liable. *Taber* v. *Seaboard Air Line Ry.*, 66 S. E. 292 (S. C.).

By the weight of authority railroads are liable for the acts of the employees of a sleeping car company. The basis of liability is sometimes said to be the fact that both companies are operating the train jointly. *Airey* v. *Pullman Palace Car Co.*, 50 La. Ann. 648. But this explanation is erroneous, for a sleeping car company is not a carrier. *Duval* v. *Pullman Palace Car Co.*, 62 Fed. 265. Nor is such a company conversely liable for the acts of a railway servant. *Lawrence* v. *Pullman Palace Car Co.*, 144 Mass. 1. The carrier's liability is often put upon the ground that the porter is its agent. *Pennsylvania Co.* v. *Roy*, 102 U. S. 451. This, too, is an unsound explanation, for the carrier is liable even though by contract it has no right to control the porter. *Pullman Co.* v. *Norton*, 91 S. W. 841 (Tex.). The real basis of the liability is, as the present case states, that the carrier must make reasonable provision for the comfort and convenience, as well as for the safety of its passengers. See *Dwinelle* v. *N. Y. C. & H. R. R. R. Co.*, 120 N. Y. 117, p. 127. And the delegation of such a duty, whether as to equipment or as to roadway, will not free the carrier from liability for a breach. *Louisville, New Albany, & Chicago Ry. Co.* v. *Snyder*, 117 Ind. 435.

CONFLICT OF LAWS — EQUITY — ENJOINING AN ACT WITHOUT THE JURISDICTION CAUSING DAMAGE WITHIN. — The defendant constructed a canal conveying the waters of the Colorado River by means of an intake situated in Mexico. An accumulation of water resulted within the territory of Arizona which damaged the plaintiff's property situated therein. The plaintiff sought an injunction to prevent the injury. *Held*, that it was within the power of the court to grant the writ. *Salton Sea Cases*, 172 Fed. 792 (C. C. A., Ninth Circ.). See NOTES, p. 390.

CONFLICT OF LAWS — RIGHTS IN PROPERTY — PROPERTY ACQUIRED BY SPOUSES AFTER MARRIAGE. — A French citizen was married in France. As there was no antenuptial contract, the wife under the French law had a community of interest in his property. He subsequently became domiciled in New York where he acquired real and personal property and died intestate. *Held*, that the whole property is subject to the transfer tax. *In re Majot's Estate*, 119 N. Y. Supp. 888 (Sup. Ct., App. Div.).

It is a general rule that rights in both realty and personalty are determined by the law of the *situs* at the time of the transaction. *Duncan* v. *Lawson*, 41 Ch. D. 394; *Cammell* v. *Sewell*, 5 H. & N. 728. In England this rule has been disregarded under facts similar to those in the principal case, and on the ground of an implied contract the law of the matrimonial domicile has been held to govern as to both personalty and realty. *De Nichols* v. *Curlier*, [1900] A. C. 21; *De Nichols* v. *Curlier*, [1900] 2 Ch. 410. But the American authorities support the principal case and repudiating the theory of an implied contract, properly determine by the law of the *situs* the passing of interests acquired after marriage. See *Saul* v. *His Creditors*, 5 Mart. N. S. (La.) 569. And even where the foreign law is adopted by an express antenuptial contract the courts hold it inapplicable to property subsequently acquired in another state. *Fuss* v. *Fuss*, 24 Wis. 256. But where the contract expressly states that the foreign law shall apply to property subsequently acquired elsewhere, it has been held to govern the distribution of personalty. *Decouche* v. *Savetier*, 3 Johns. Ch. 190. It is submitted that such a contract, although it creates an equitable right, should not affect the laws of another country regarding the title to or distribution of property subsequently acquired. See 13 HARV. L. REV. 601.

CONFLICT OF LAWS — SITUS OF CHOSES IN ACTION — FOREIGN BONDS HELD BY FOREIGNER DOMICILED ABROAD. — The testator, a domiciled American citizen, died in England, having with him at the time foreign government and railway bonds. *Held*, that these bonds have their *situs* in England and are liable to the estate duty. *Winans* v. *Att'y-Gen.*, 26 T. L. R. 133 (Eng., H. L., Dec. 7, 1909).

The English estate duty applies to all property situated in the kingdom at the death of the owner. A debt as such can have no real *situs*. As early as the sixteenth century, however, it was laid down in England that the *situs* of a specialty debt was with the specialty. *Byron* v. *Byron*, 1 Cro. Eliz. 472. In furtherance of this view the English courts have been inclined to hold that where a debt is evidenced by a document the transfer of which makes a good title, the latter is a valuable chattel subject to taxation where found. So American railway shares have been held subject to probate duty in England. *Baroness Stern* v. *The Queen*, [1896] 1 Q. B. 211. The same has been held as to foreign bonds, being securities marketable within the kingdom. *Att'y-Gen.* v. *Bouwens*, 4 M. & W. 171. And a recent case says such bonds are taxable on the same theory as bank-notes. See *Att'y-Gen.* v. *Glendining*, 92 L. T. R. 87. The present decision settles the English law wisely and is in accordance with our own mercantile understanding. See *Blackstone* v. *Miller*, 188 U. S. 189; 21 HARV. L. REV. 50.

DECEIT — GENERAL REQUISITES AND DEFENSES — REFRAINING FROM EXERCISING LEGAL RIGHT. — The defendant, intending to induce the plaintiff to refrain from demanding payment from their mutual debtor, falsely represented that the debtor was solvent. The plaintiff relied upon this misrepresentation, and by the time he discovered the actual facts, the debtor had no assets. The plaintiff sued for deceit. *Held*, that the plaintiff cannot recover, because he had no interest in the debtor's property and because his damages are problematical. *Graham* v. *Peale, Peacock, & Kerr*, 173 Fed. 9 (C. C. A., First Circ.).

A requisite to the maintenance of an action for deceit is that the plaintiff act upon the defendant's misrepresentation. *Smith* v. *Chadwick*, 20 Ch. D. 27, 44. To refrain from acting or from enforcing a legal right is, however, a sufficient act. *Fottler* v. *Moseley*, 179 Mass. 295; *Bowen* v. *Carter*, 124 Mass. 426. But in Massachusetts, where the present case arose, cases where a creditor, relying upon the defendant's misrepresentation, refrains from pressing his claim against his debtor have been confused with cases where the defendant has colluded with the debtor in conveying away his assets in fraud of creditors. See *Bradley* v. *Fuller*, 118 Mass. 239. In the latter, no recovery can be had unless the creditor